

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AMELIA PATRICIA CROWELL,)	
)	
Plaintiff,)	
)	Case No. 1:09-cv-01921
v.)	
)	Chief Judge James F. Holderman
)	Magistrate Judge Susan E. Cox
BANK OF AMERICA PENSION PLAN FOR)	
LEGACY COMPANIES, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS’ MOTION FOR JUDGMENT PURSUANT TO FED. R. CIV. P. 52; AND
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT UNDER FED. R. CIV. P. 56**

Defendants Bank of America Pension Plan for Legacy Companies (“BAC Pension Plan”) and Bank of America Corporation (“BAC”) (collectively, “Defendants”) by their attorneys, Dykema Gossett PLLC, move pursuant to Fed. R. Civ. P. 52 and applicable law for judgment affirming the administrator’s denial of the appeal of Plaintiff Amelia Patricia Crowell (“Plaintiff” or “Crowell”) and dismissing Crowell’s Amended Complaint (“Complaint”) in its entirety.¹ In the alternative, Defendants move under Rule 56 for Summary Judgment on Plaintiff’s

¹ The most appropriate procedure for applying the standards of review and resolving this case is through the vehicle of a Rule 52 Motion, rather than summary judgment, absent any objection of the parties. *See, e.g., Juszynski v. Life Ins. Co. of North America*, No. 06 CV 5503, 2008 WL 877977, at *5 (N.D. Ill. Mar 28, 2008); *Migliorisi v. Walgreens Disability Benefits Plan*, No. 06 C 3290, 2008 WL 904883 (N.D. Ill. Mar. 31, 2008); *Marshall v. Blue Cross Blue Shield Ass’n*, No. 04 C 6395, 2006 WL 2661039, at *1-2 (N.D. Ill. Sept. 13, 2006) (citing various authorities and concluding that a Rule 52 trial on the papers is an appropriate procedure for resolving ERISA benefits disputes, absent objections from the parties). Here, the parties have not objected to this method but have offered Rule 52 as an appropriate vehicle here. *See* Doc. 46 (5/25/2010 Report of Parties’ Planning Meeting), at 2, 4. Thus, a Rule 52 review, based on the administrative record as expanded by the Court’s May 12, 2010 Order, is the most proper method for resolution here.

Complaint. The grounds for Defendants' Motion are set forth in Defendants' Memorandum in Support, which is filed herewith.

Dated: August 2, 2010

Respectfully submitted,

**BANK OF AMERICA PENSION PLAN FOR
LEGACY COMPANIES and BANK OF
AMERICA CORPORATION.**

By: s/ Patrick T. Stanton
Patrick T. Stanton (pstanton@dykema.com)
DYKEMA GOSSETT PLLC
10 South Wacker Drive, Suite 2300
Chicago, Illinois 60606
Phone: 312-627-2282
Fax: 312-627-2302

Paul A. Wilhelm (pwilhelm@dykema.com)
DYKEMA GOSSETT PLLC
400 Renaissance Center
Detroit, MI 48243
Phone: 313-568-6966
Fax: 313-568-6691

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2010 I electronically filed the foregoing paper using the Court's ECF system, which will send notification of such filing to the following:

Dianne M. Onichimowski
(donichimowski@comcast.net)
DMO LAW FIRM
111 E. Wacker Drive, Suite 2600
Chicago, IL 60601
Phone: (312) 474-7788
Fax: (312) 251-9701

By: s/ Patrick T. Stanton
Patrick T. Stanton (pstanton@dykema.com)
DYKEMA GOSSETT PLLC
Attorneys for Defendants
10 S. Wacker Drive, Ste. 2300
Chicago, Illinois 60606
Phone: 312-627-2282
Fax: 312-627-2302